

CIVIL SERVICE COMMISSION MINUTES

December 18, 2002

A meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Gordon Austin
Barry I. Newman
Sigrid Pate
Mary Gwen Brummitt
Marc Sandstrom

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES
December 18, 2002

1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway,
San Diego, California 92101

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
<u>1,5,6,7,8,9,10,11,13</u>		<u>12</u>	<u>16 (abandoned)</u>

COMMENTS Motion by Newman to approve all items not held for discussion; seconded by Brummitt. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this
location to hear the announcement of the
Closed Session Agenda

A. Commissioner Austin: Everett Bobbitt, Esq., on behalf of **Reginald Griddine**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department.

B. Commissioner Brummitt: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Jamie-Louise Miller**, former Intermediate Clerk Typist, appealing an Order of Removal and Charges from the Health and Human Services Agency.

C. Commissioner Brummitt: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Gary Nevills**, Detentions Processing Technician, appealing an Order of Pay Step Reduction and Removal of Trainer Premium from the Sheriff's Department.

D. Commissioner Pate: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Ursula Homan**, Detentions Processing Technician, appealing an Order of Removal of Trainer Pay and Charges from the Sheriff's Department.

E. Commissioner Austin: Veronica Aguilar, Esq., on behalf of **David Munshower**, former Stock Clerk, appealing an Order of Termination and Charges from the Sheriff's Department.

REGULAR AGENDA
County Administration Center, Room 358

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and the President of the Commission approves it.

MINUTES

1. Approval of the Minutes of the regular meeting of November 20, 2002.

Commissioner Newman requested that the Minutes reflect that several Commissioners expressed various concerns regarding Agenda Item No. 7.

Motion by Newman to approve Minutes after the above change is made; seconded by Sandstrom. Carried.

CONFIRMATION OF ASSIGNMENTS

2. Commissioner Newman: **Judy Nelson**, former Registered Veterinary Technician, appealing an Order of Termination and Charges from the Department of the Animal Control.

Confirmed.

3. Commissioner Austin: **James Proffitt**, former Supervisor Deputy Public Administrator Guardian, appealing an Order of Removal and Charges from the Health and Human Services Agency (HHSA).

Confirmed.

4. Commissioner Brummitt: **Charles Lo**, Supervising Clerk, appealing an Order of Suspension and Charges from HHSA.

Confirmed.

INVESTIGATIONS

Findings

5. Commissioners Pate and Sandstrom: Everett Bobbitt, Esq., on behalf of the **Deputy Sheriffs' Association** regarding its request that the Civil Service Commission hear appeals of peace officers receiving reprimands. (Tabled from the meeting of November 20, 2002)

Prior to the rendering of the Findings and Recommendations below, Everett Bobbitt, Esq. addressed the Commission. He informed the Commission that this matter, if denied, will be referred to the Superior Court, and feels that the Court will rule in favor of the DSA's request, all at the County's expense.

FINDINGS AND RECOMMENDATIONS:

Everett Bobbitt, Esq., on behalf of DSA filed a request with the CSC to grant full evidentiary appeal hearings before the Commission for peace officers receiving written reprimands. This request was considered on July 26, 2002 and September 18, 2002, at which times the Commission received input from representatives from DHR, the Sheriff's Department, County Counsel and the DSA. An investigation was conducted by Commissioners Sandstrom and Pate on November 6, 2002. As a result of this investigation, a draft report was presented at the CSC meeting on November 20, 2002. Language in the draft report elicited extensive discussion from the Commissioners and the Public. The matter was continued to December 18, 2002. Near the conclusion of the November 6, 2002 meeting a suggestion was offered that Civil Service Rule VII should be amended to grant full evidentiary appeal hearings. It was further suggested that Rule VII be amended so that most of the language would be preserved and the amendment would not affect non-peace officer employees. Such a change would involve meet and confer processes. The

investigating Commissioners concurred that this was the most logical way to accommodate DSA's request and mitigate the issue of all County employees being able to file appeals by limiting the appeals to those employees who have a statutory right to administrative appeals (e.g., peace officers).

On December 9, 2002, the Board of Supervisors met and addressed this issue. The Board of Supervisors instructed its labor negotiator not to be involved in negotiating the matter on behalf of the Commission. Based on this opposition, the investigating Commissioners concluded that DSA's request to the Commission be denied. It is therefore recommended that the Civil Service Commission deny DSA's request to grant full evidentiary appeal hearings before the Commission for peace officers receiving written reprimands; that the Commission read and file this report; and that the proposed recommendations shall become effective upon the date of approval by the Civil Service Commission.

On a personal aside, Commissioner Sandstrom expressed that of the two options available to the Board of Supervisors (Commission or Arbitration), the Commission would have been the more appropriate option and would have avoided future legal action as expressed by Mr. Bobbitt, above. However, noting that the Board of Supervisors relied on its legal counsel, Commissioner Sandstrom accepted the Board's decision.

Motion by Sandstrom to approve Findings and Recommendations; seconded by Pate. Carried.

AYES: Austin, Pate, Brummitt, Sandstrom
NOES: None
ABSTENTIONS: Newman

DISCIPLINES

Appeals

6. Everett Bobbitt, Esq., on behalf of **Brandon Chow**, Deputy Sheriff-Detentions/Courts, appealing a Written Reprimand from the Sheriff's Department.

RECOMMENDATION: Deny Request.

Attorney Everett Bobbitt requested that this item be pulled. After hearing the Findings and Recommendations in Item No. 5 above, he acknowledged that this item is moot.

Motion by Newman to accept staff recommendation; seconded by Sandstrom. Carried.

Findings

7. Commissioner Austin: Everett Bobbitt, Esq., on behalf of **Reginald Griddine**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

The matter of the appeal of Reginald Griddine from a written Order of Termination and Charges terminating him from his class and position of Deputy Sheriff was presented to the Commission. Prior to the commencement of the hearing the parties entered into a stipulation reducing the originally imposed penalty of termination to a twenty (20) working day (170 hours) suspension. It was further stipulated that the

Appointing Authority shall prepare an amended Order of Suspension and Charges reflecting the reduction in discipline. The Appointing Authority agreed to the restoration of back pay and benefits, including interest for eleven (11) working days (93.5 hours). Appellant agreed to withdraw his appeal.

At the Civil Service Commission meeting on November 20, 2002, the hearing officer expressed concern about language in the Stipulation that removed Causes, II, III and IV from the original order of discipline. A post-stipulation conference was conducted on November 26, 2002 wherein concerns of the hearing officer were addressed and resolved. It was determined that the public would be best served if the Commission accepts the Stipulation and approve the Withdrawal of Appeal. It is therefore recommended that the Stipulation be accepted and the Withdrawal of Appeal be approved by the Commission and incorporated herein by reference; that Employee's reinstatement to the classification of Deputy Sheriff (Class No. 5746) is ratified; that Employee be awarded back pay and benefits, including interest, for eleven (11) working days (93.5 hours); that the Commission read and file this report; and that this proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Austin to approve Findings and Recommendations; seconded by Brummitt. Carried.

8. Commissioner Brummitt: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Jamie-Louise Miller**, former Intermediate Clerk Typist, appealing an Order of Removal and Charges from HHSA.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Incompetency; Cause II - Inefficiency (inability to perform work accurately and timely); Cause III - Conduct Unbecoming an Employee of the County; Cause IV - Discourteous treatment; and Cause V - Insubordination. Employee has been employed by the County for approximately 13 years. At the time of her removal, she held the class and position of Intermediate Clerk Typist, assigned to the Center City Family Resource Center. The Agency and Employee stipulated to the truth of all of the factual allegations contained in the Order of Removal and Charges. The only issue remaining was whether the level of discipline was excessive. Employee's Union representative indicated that certain causes and charges were a result of erroneous advice given to Employee by the Union itself. Employee's disciplinary record consists of a demotion in 1995 and two letters of warning for insubordination in June and July 2002. Her performance report for the period February 11, 2000 to February 11, 2001 consisted of four individual category ratings of "improvement needed" and contained an overall rating of "unsatisfactory". The closing summary of a Performance Improvement Plan (PIP) indicated that Employee was not successful in meeting the performance improvement goals. Employee was transferred to a number of different assignments because of her poor relations with co-workers and in an effort to find an assignment in which she could perform competently. It appeared that this circumstance was due in large part to Employee's insubordinate and disagreeable behavior. Even assuming that proven charges under Causes IV and V of the Order were the result of the Union's advice, the remaining proven charges are more than enough to sustain the Removal. By Stipulation, the Agency proved all of the charges in Causes I-V, with the caveat that the proven charges under Causes IV and V may have been due in whole or in part to the Union's advice. Employee is guilty of Causes I, II, III, IV and V. It is therefore recommended that the Order of Removal and Charges be affirmed; that the Commission read and file this report; and

that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Brummitt to approve Findings and Recommendations; seconded by Pate. Carried.

AYES: Austin, Pate, Newman, Sandstrom
NOES: None.
ABSTENTIONS: Newman

9. Commissioner Brummitt: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Gary Nevills**, Detentions Processing Technician, appealing an Order of Pay Step Reduction and Removal of Trainer Premium from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Incompetency (erroneous release of an inmate); Cause II - Acts incompatible with and/or inimical to the public service. Employee held the position of Detention Processing Clerk at the time of the incident at issue, and has been employed with the County since 1993. Employee's disciplinary record reveals three prior disciplines. He testified that all of his previous employee performance appraisals contained overall ratings of "Standard" or "Above Standard". The report for the rating period that reflected Employee's prior discipline was rated "Improvement Needed". Each of the three prior disciplines were for "clerical errors" resulting in inmates being retained in custody for periods of time longer than ordered. However, there was testimony presented that under guidelines newly adopted by the Department, these prior incidents would have resulted in only verbal counseling and additional training if they had occurred today, so long as such errors do not exceed three per year. This tolerance level was created at the urging of Employee's direct supervisor. This disciplinary appeal had an unusual circumstance as Employee's direct supervisor, who conducted the investigation, opposed the level of discipline and testified in favor of Employee.

It was clear from the evidence and testimony that Employee is a dedicated and intelligent Clerk who generally performs at a very high level. However, the documentary evidence presented establishes at least some level of negligence by Employee. The booking/release document in question clearly states that the inmate was to be held an additional 90 days, which hardly qualifies as a clerical error. Under all the facts and circumstances, this hearing officer cannot rule that the selected discipline is unreasonable. Nevertheless, in recognition of Employee's dedication, it is hoped that he will continue as a motivated and valued member of the Department. Employee is guilty of Cause I and Cause II. It is therefore recommended that the Order of Pay Step Reduction and Removal of Trainer Premium and Charges be affirmed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Brummitt to approve Findings, Conclusions and Recommendations; seconded by Newman. Carried.

10. Commissioner Pate: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Ursula Homan**, Detentions Processing Technician, appealing an Order of Removal of Trainer Pay and Charges from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

The matter of the appeal of Ursula Homan from an Order of Removal of Trainer Pay and Charges removing her from her class and position of

Detentions Processing Technician was presented to the Civil Service Commission. Prior to the commencement of the hearing the parties entered into an Agreement. As part of the Agreement, Appellant submitted a withdrawal of her appeal and agreed to resign from her position, retroactive to August 1, 2002. She further waived any right that may exist to receipt of Trainer Premium pay. It was further stipulated that the Appointing Authority will withdraw the Order of Removal of Trainer Pay and Charges, dated August 2, 2002 and its subsequent amended Order. The hearing officer has determined that the public would be best served if the Commission accepts the Agreement and approves the Withdrawal of Appeal. It is therefore recommended that the Agreement be accepted and the Withdrawal of Appeal be approved by the Commission and incorporated herein by reference; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Pate to approve Findings and Recommendations; seconded by Sandstrom. Carried.

11. Commissioner Austin: Veronica Aguilar, Esq., on behalf of **David Munshower**, former Stock Clerk, appealing an Order of Termination and Charges from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

The hearing was duly noticed for December 4, 2002. Shortly after the commencement of the hearing, however, the parties entered into a verbal agreement on the record that included Appellant's resignation, effective September 4, 2002. Subsequently, Mr. Munshower furnished the hearing officer with a written resignation dated December 4, 2002. The hearing officer has considered the verbal agreement that includes a Letter of Resignation and has determined that the public would be best served if the Commission accepts the Agreement and Letter of Resignation. It is therefore recommended that the Commission accept the December 4, 2002 verbal agreement and Letter of Resignation effective September 4, 2002, that the Commission read and file this report; and that these Findings and Recommendations shall become effective upon the date of approval by the Civil Service Commission.

Motion by Austin to approve Findings and Recommendations; seconded by Pate. Carried.

DISCRIMINATION

Complaints

12. **Diane Daniels**, former Deputy Probation Officer, alleging discrimination based on non-job related factors (alleged unwanted personal advances) by the Department of Probation.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff recommendation approved. Commissioner Pate assigned.

SELECTION PROCESS

Complaints

13. Candidates for Deputy District Attorney IV and V.

RECOMMENDATION: Allow Executive Officer to give verbal report.

Larry Cook, Executive Officer offered an overview of the appeal process for informational purposes only. He addressed main issues within the Civil Service Rules. He especially pointed out that any appellants regarding this matter must submit his/her appeal on a Rule 10 Form "Petition to Appeal Selection Process" in order for the Commission to consider the appeal. He explained that this form can be found on the Website, as well as stating that there were forms available at this meeting for distribution. He explained that timeliness was of the utmost importance, and that appellants had 15 calendar days in which to submit an appeal, once they have received an answer from DHR regarding their appeal. Mr. Cook encouraged candidates to call, write and/or e-mail should they have any questions regarding the process or the rules. He also encouraged any candidates in the audience to come forth with any questions or comments they may want immediately addressed.

He explained further that any Commission action is discretionary. The Commissioners asked Mr. Cook why he felt it was necessary to offer this information at a Civil Service Meeting. Mr. Cook responded that there were several reasons: 1) Change in leadership; 2) unusual process because appointments have already been made; 3) upcoming holidays: office closure and the fact that many people are unavailable during the next two weeks and he wanted to ensure that the candidates were fully informed and equipped to file a timely appeal.

Findings

14. **Jonathan Cavazos**, appeal of removal of his name by the Department of Human Resources from the employment list for Deputy Sheriff-Detentions/Courts.

15. **Paul Mossuto**, appeal of removal of his name by the Department of Human Resources from the employment list for Correctional Deputy Probation Officer I.

RECOMMENDATION: Ratify Item Nos. 14 and 15. Appellants have been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item Nos. 14 and 15 ratified.

OTHER MATTERS

Abandonment of Appeal

16. Commissioner Pate: **Tim Mathis**, former Protective Social Worker II, appealing an Order of Automatic Separation for Failure to Return After Leave from HHSA.

RECOMMENDATION: Deem appeal to be abandoned.

Staff recommendation approved.

Extension of Temporary Appointments

17. Department of Child Support Services

19 Imaging Technician Trainees (Leilani Gonzales, Lien Lungsida, Elsa Hagos, Becheler Roseme, Joanna Siqueiros, Carmelita Tesoro, Antonio Pall, Maribel Cardenas, Nona Hosmillo, Dorothea Holmes, Leticia Llanes, Carmencita Alcid, Chris Arcitio, Michelle Dowell, Leticia Solis, Alicia Alvarez, Charles Wilhelm, Benilda Ramos, Dennis Mundo)

18. Health and Human Services Agency

- A. 11 Protective Services Workers I (Gloria Tapia, Patricia Torres, Loretta Broadnax, Rodney Swanson, Sandra Delatorre, Ann Costello, Brian Piepenbrink, Mauro Nieves, Gerald James, Robert Zemeida, Martha Velazco)
- B. 13 Protective Services Workers II (Rose Anyanwu, Bernice Briggs, Juan Delso, Salina Bambic, Anzette Shackelford, Fatimah Abdullah, Ofelia Figueroa, Jinling Wang, Anna Cessna, Antonia Torres, Maria Gutierrez, Marcy Kiar, Beatrice Saavedra)
- C. 7 Recreational Care Worker Trainees (Danette Myers, Yvette Velasco, Tiffany Anderson, Jettie Alexander, Elvia Garcia, Athena Garcia, Sabrina Pristigiacomo)
- D. 2 Recreational Care Workers I (Laurel Piper, Emilie Almazan)
- E. 1 Communicable Disease Investigator (Juan Olmeda)
- F. 1 Health Information Specialist I (Tanya Pham-Neff)
- G. 1 Licensed Vocational Nurse (Cynthia Berry)

19. Department of Planning and Land Use

- 1 Intermediate Clerk Typist (Brandie Britt)

RECOMMENDATION: Ratify Item Nos. 17 - 19.

Item Nos. 17-19 ratified.

20. Public Input.

ADJOURNMENT: 3:40 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE January 15, 2003.